



[BILLING CODE: 6750-01S]

FEDERAL TRADE COMMISSION

[File No. 152 3104]

Jim Koons Management Company; Analysis of Proposed Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order -- embodied in the consent agreement -- that would settle these allegations.

DATES: Comments must be received on or before February 29, 2016.

ADDRESSES: Interested parties may file a comment at

<https://ftcpublic.commentworks.com/ftc/jimkoonsmgtconsent> online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY**

INFORMATION section below. Write “Jim Koons Management Company - Consent Agreement; File No. 152-3104” on your comment and file your comment online at

<https://ftcpublic.commentworks.com/ftc/jimkoonsmgtconsent> by following the instructions on the web-based form. If you prefer to file your comment on paper, write “Jim Koons

Management Company - Consent Agreement; File No. 152-3104” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex D), Washington, DC

20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Evan Zullo (202) 326-2914 or Courtney Estep (202) 326-2788, Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for January 28, 2016), on the World Wide Web at: <http://www.ftc.gov/os/actions.shtm>.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before February 29, 2016. Write “Jim Koons Management Company - Consent Agreement; File No. 152-3104” on your comment. Your comment - including your name and your state - will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Website, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals’ home contact information from comments before placing them on the Commission Website.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any "[t]rade secret or any commercial or financial information which . . . is privileged or confidential," as discussed in section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).¹ Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/jimkoonsmgmtconsent> by following the instructions on

¹ In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

the web-based form. If this Notice appears at <http://www.regulations.gov/#!home>, you also may file a comment through that website.

If you file your comment on paper, write “Jim Koons Management Company - Consent Agreement; File No. 152-3104” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Website at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before February 29, 2016. You can find more information, including routine uses permitted by the Privacy Act, in the Commission’s privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission (“FTC” or “Commission”) has accepted, subject to final approval, an agreement containing a consent order from Jim Koons Management Company. The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the FTC will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement’s proposed order.

The respondent is a car dealership that sells used motor vehicles. According to the FTC complaint, respondent has represented that the used motor vehicles it sells have been subject to rigorous inspection, including for safety issues, but has failed to disclose that the used motor vehicles it sells are subject to open recalls for safety issues.

For instance, the respondent has posted advertisements on the website www.koons.com which prominently featured the “Koons Used Car Advantage” and included the representation that “[b]acked by the Koons Used Car Advantage, each vehicle we carry has been carefully selected and tested... .” The website listed among the “Koons Used Car Advantage Guarantees” the following representation: “Every certified Koons Outlet vehicle must pass a rigorous and extensive quality inspection before it can be sold. Our certified mechanics check all major mechanical and electrical systems and every power accessory as part of our rigid quality controls.”

Even though it makes such claims, the respondent has allegedly advertised on its websites numerous certified used vehicles that were subject to open recalls for safety issues. In numerous instances, when the respondent allegedly advertised certified used vehicles that are subject to open recalls for safety issues, it provided no accompanying clear and conspicuous disclosure of this fact. The proposed complaint alleges that this failure to disclose constitutes a deceptive act or practice under section 5 of the FTC Act.

The proposed order is designed to prevent the respondent from engaging in similar deceptive practices in the future. Part I prohibits the respondent from representing that used motor vehicles it offers for sale are safe, have been repaired for safety issues, or have been subject to an inspection for issues related to safety unless the used motor vehicles are not subject to any open recalls for safety issues or the respondent discloses, clearly and conspicuously, in

close proximity to such representation, any material qualifying information related to open recalls for safety issues. Part II is a provision that orders the respondent to notify every consumer who purchased from it a certified used motor vehicle between July 1, 2013 and June 15, 2015 that some of the used vehicles it sold during this time had been recalled for safety issues which weren't repaired as of the date they were sold. The notice also specifies how consumers can check whether the vehicle is subject to an unrepaired recall at the National Highway Traffic Safety Administration's website, <https://vinrcl.safercar.gov/vin/>. This website also provides information on how to get a vehicle fixed if it is subject to an open recall.

Parts III through VII of the proposed order are reporting and compliance provisions. Part III requires the respondent to maintain for five years, and produce to the Commission upon demand, any relevant ads and associated documentary material. Part IV is an order distribution provision that requires the respondent to provide the Order to current and future principals, officers, directors, and managers, and to all current employees, agents, and representatives having responsibilities with respect to the subject matter of the Order. Part V requires the respondent to notify the Commission of corporate changes that may affect compliance obligations. Part VI requires the respondent to submit a compliance report to the Commission 60 days after entry of the order, and also additional compliance reports within 10 business days of a written request by the Commission. Part VII "sunset" the order after twenty years, with certain exceptions.

The purpose of this analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or proposed order, or to modify in any way the proposed order's terms.

By direction of the Commission.

Donald S. Clark
Secretary.

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